

default judgment. *Arista Records LLC v. Salas*, No. 3:08-cv-855-O, 2009 WL 290185, at *2 (N.D. Tex. Feb. 5, 2009) (O'Connor, J.).

Under the Lanham Act, when a defendant wilfully violates § 1125, plaintiffs are entitled to recover (1) defendant's profits, (2) plaintiff's damages, and (3) court costs. 15 U.S.C. § 1117(a). In addition, a court assessing damages may, as proper under the circumstances of the case, enter judgment for any amount up to three times actual damages. *Id.* The Lanham Act also gives this Court the discretion to award attorneys' fees to the prevailing party in "exceptional cases." *Id.* The Fifth Circuit has acknowledged that "the exceptional case is one in which the defendant's trademark infringement can be characterized as 'malicious,' 'fraudulent,' 'deliberate,' or 'willful.'" *Tex. Pig Stands, Inc. v. Hard Rock Café Int'l, Inc.*, 951 F.2d 684, 697 (5th Cir. 1992).

Additionally, under Chapter 41 of the Texas Civil Practice and Remedies Code, the Court may award exemplary damages for violations of Texas common law "if the claimant proves from clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud; (2) malice; or (3) gross negligence."¹ *Tex. Civ. Prac. & Rem. Code Ann. § 41.003(a)* (West 2013).

Plaintiff has provided the Court with affidavits that attest to his damages. *See generally* ECF No. 13. Ultimately, Plaintiff seeks to recover the following:

1. Actual damages in the amount of \$60,443.00;
2. Defendant's profits in the amount of \$86,348.00;
3. Plaintiff's treble damages in the amount of \$181,331.00;

¹ In its order, this Court previously found that Plaintiff is entitled to exemplary damages under Texas law and attorneys' fees under the Lanham Act. *See* Order, Nov. 10, 2014, ECF No. 12.

4. Exemplary damages in the amount of \$300,000.00;
5. Reasonable attorneys' fees in the amount of \$25,000.00; and
6. Costs in the amount of \$475.00.

See Mot. J. 1-2, ECF No. 13; (Antonini Aff.), ECF No. 13-1; (Schwartz Aff.), ECF No. 13-2.

Plaintiff additionally seeks entry of the following permanent injunction against Defendant:

Defendant, K Design Marketing, Inc., and all employees, agents, anyone acting in concert with Defendant, and other persons with knowledge of this Permanent Injunction, are hereby **ENJOINED** to refrain from further use of DIGICLEAN, DIGICLOTH, or DIGIPAD, or any name or mark deceptively similar thereto in any manner (including, but not by way of limitation, as a hidden keyword computer search term or meta tag).

Mot. J. 2, ECF No. 13; Mot. J. (Permanent Injunction), ECF No. 13-4. Having considered the affidavits, the Court awards Plaintiff the following damages:

1. Plaintiff's treble damages in the amount of \$181,329.00;²
2. Defendant's profits in the amount of \$86,348.00;
3. Exemplary damages in the amount of \$293,582.00;³
4. Reasonable attorneys' fees in the amount of \$25,000.00; and
5. Costs in the amount of \$475.00.

² Although Plaintiff seeks treble damages in the amount of \$181,331.00, the Court finds that the actual amount of treble damages, based on Plaintiff's proffered amount of actual damages, is \$181,329.00.

³ Texas Civil Practice and Remedies Code § 41.008(b) provides the following:
(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus
(B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or
(2) \$200,000.

Here, the Court finds that Plaintiff's economic damage total is \$146,791.00. Accordingly, Plaintiff's exemplary damage total is capped at \$293,582.00.

In addition, the Court enters the aforementioned permanent injunction against Defendant. A final judgment will issue separately.

SO ORDERED on this **26th day of November, 2014.**


Reed O'Connor
UNITED STATES DISTRICT JUDGE